

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Comment Sought on the National Cable & Telecommunications Association Petition for Rulemaking to Reduce Universal Service High-Cost Support Provided to Carriers in Areas Where There is Extensive Unsubsidized Facilities-Based Voice Competition	)	GN Docket No. 09-51 WC Docket No. 05-337 RM-11584

**COMMENTS  
of the  
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT  
OF SMALL TELECOMMUNICATIONS COMPANIES**

**I. INTRODUCTION**

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these comments in response to the FCC’s Public Notice<sup>1</sup> seeking comment on the National Cable and Telecommunications Association’s (NCTA) Petition for Rulemaking proposing new rules for universal service high-cost support.<sup>2</sup> Specifically, NCTA proposes procedures to reduce the amount of high-cost support provided to an ILEC in study areas where there is extensive unsupported facilities-based voice competition or where the ILEC’s rates for local exchange service have been deregulated.

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<sup>1</sup> *Comment Sought on the National Cable & Telecommunications Association Petition for Rulemaking to Reduce Universal Service High-Cost Support Provided to Carriers in Areas Where There is Extensive Unsubsidized Facilities-Based Voice Competition*, GN Docket No. 09-51, WC Docket No. 05-337, RM-11584, Public Notice, DA 09-2558 (rel. Dec. 8, 2009).

<sup>2</sup> National Cable & Telecommunications Association, *Reducing Universal Service Support in Geographic Areas that are Experiencing Unsupported Facilities-Based Competition*, Petition for Rulemaking, GN Docket No. 09-51, WC Docket No. 05-337 (fil. Nov. 5, 2009) (NCTA Petition).

OPASTCO is a national trade association representing approximately 520 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve more than 3.5 million customers. Almost all OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37). Most OPASTCO members receive the majority of their cost recovery and operating revenues from a combination of high-cost universal service support and intercarrier compensation (ICC). Therefore, the actions the Commission takes to reform its Universal Service Fund (USF) and ICC policies will largely determine the ability of many rural consumers to have access to high-speed, next generation broadband and the wide array of advanced applications and services that it makes possible.

The FCC should reject NCTA's petition for rural service areas. By focusing solely on the support needed to provide *voice* service to customers that lack a competitive alternative, adoption of NCTA's proposal would virtually guarantee that the Commission's goal of ubiquitous, robust broadband availability will not be achieved in these territories. There are other ways the Commission can address concerns regarding the current USF contribution factor that would not harm broadband investment in rural service areas. They are: (1) expanding the base of providers and services that contribute to the Fund including, at a minimum, all broadband Internet access providers; (2) limiting support in each rural service area to one fixed broadband provider and one mobile wireless provider; and, (3) abandoning the identical support rule and, at least in rural service areas, basing support for competitive eligible telecommunications carriers (ETCs) on their own costs. Finally, the Commission's National Broadband Plan should

recommend that OPASTCO's plan for a Universal Service High Speed Broadband Fund be used as a starting point for further rulemaking proceedings on USF and ICC reform for rural service areas.

**II. THE COMMISSION SHOULD REJECT THE NCTA PROPOSAL FOR RURAL SERVICE AREAS AS IT WOULD PREVENT THE ACHIEVEMENT OF UBIQUITOUS HIGH-SPEED BROADBAND SERVICE AVAILABILITY IN THESE TERRITORIES**

NCTA's petition is backwards looking. It focuses solely on the extent of competition for *voice* service in rural areas, and the minimum support needed to continue providing *voice* service to those customers without access to a competitive alternative. However, it fails to consider the support that rural ILECs will need to make robust broadband services available and affordable to every resident and business throughout their service areas, which is the goal of policymakers and the FCC's National Broadband Plan, in particular.<sup>3</sup> NCTA's proposal should therefore be rejected, at least for rural service areas.

Even with the level of revenues that rural ILECs receive today from federal high-cost support, many still are not able to deploy broadband to 100 percent of their customer base,<sup>4</sup> and in some cases the speeds that are offered are well below those that are generally available in urban areas. Thus, if the majority of rural ILECs are unable to offer ubiquitous, robust broadband services with their existing revenue levels, then certainly a reduction in those revenues brought about by adoption of the NCTA proposal would completely destroy their ability to accomplish this goal going forward. In its

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<sup>3</sup> See, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, Notice of Inquiry, 24 FCC Rcd 4342, 4344, ¶5 (2009) ("Our goal must be for every American citizen and every American business to have access to robust broadband services.").

<sup>4</sup> Blair Levin, Executive Director of the FCC's Omnibus Broadband Initiative, acknowledged that "...small telephone companies...still control many lines that have not been upgraded to enable broadband service." *TR Daily* (Nov. 18, 2009).

September 2009 Status Report on the National Broadband Plan, the FCC’s Broadband Task Force refers to the current USF and the public switched telephone network (PSTN) as “storm clouds” that may make investment more difficult.<sup>5</sup> It follows, then, that adoption of NCTA’s proposal in rural service areas would be the equivalent of a torrential downpour, making further investment next to impossible.

NCTA’s petition states that the FCC should consider whether, and how, the “savings” in high-cost support that would result from its proposal should be used to provide targeted funding to programs that promote broadband deployment and adoption.<sup>6</sup> For rural service areas, the Commission should reject proposals to merely supplement the existing High Cost program (or a reduced version of it) with an additional broadband-specific mechanism, such as one that supports deployment in unserved regions. This is a “band-aid” approach that does not fully refocus the purpose of the rural High Cost program to supporting next generation broadband networks. It improperly focuses only on initial deployment and fails to consider the fast evolving nature of broadband technologies and consumer expectations, as well as ongoing operational expenses. It is unlikely that such an approach would enable most rural ILECs to make the ongoing network investments that are necessary to allow the speeds that are available throughout the area to remain comparable to what is available in urban areas.

NCTA states that its proposal is necessary to bring the USF contribution factor back to a more reasonable level.<sup>7</sup> While it is essential that the Commission ensure that the High Cost program remains sustainable, there are several measures that can be taken

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<sup>5</sup> FCC Broadband Task Force, *National Broadband Plan Status Report*, p. 136 (rel. Sept. 29, 2009) (September 2009 Broadband Task Force Status Report).

<sup>6</sup> NCTA Petition, pp. 6, 22.

<sup>7</sup> *Id.*, p. 6.

in this regard that would not adversely affect the expansion and improvement of broadband services in rural service areas as would the NCTA proposal.

To begin with, much of the recent growth in the contribution factor can be attributed to the existing USF contribution methodology, based solely on interstate and international end-user telecommunications revenues, which are in a state of decline.<sup>8</sup> Therefore, the most logical and direct way to address this problem is to establish the broadest possible base of providers and services that are required to contribute to the Fund. Most importantly, equitable contributions should be required from *all* providers of broadband Internet access services, regardless of technological platform. Requiring all broadband Internet access providers to contribute equitably to the USF would establish a stable and sustainable contribution base and one that would experience growth for some time to come.<sup>9</sup> It would also be consistent with a reformed High Cost program that explicitly supports broadband, as these providers and their customers will all benefit from a ubiquitous broadband network.<sup>10</sup>

In addition to expanding the base of USF contributors, sustainability of the High Cost program would be greatly aided by limiting support to one fixed broadband provider

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<sup>8</sup> Total projected collected interstate and international end-user telecommunications revenues for first quarter 2009 were \$18.87 billion. For first quarter 2010, one year later, that figure was \$17.25 billion, a decline of \$1.62 billion or 9.4 percent. See, *Proposed First Quarter 2009 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, 23 FCC Rcd 17947, 17948 (2008); *Proposed First Quarter 2010 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 09-2588 (rel. Dec. 11, 2009).

<sup>9</sup> The Wireline Competition Bureau's most recent statistics on high-speed services for Internet access illustrate that subscribership to high-speed connections continues to grow at a fast pace. As of June 30, 2008, there were 132.8 million lines in service connecting homes and businesses to the Internet. This is a 32 percent or 31.8 million line increase from one year prior. See, *High-Speed Services for Internet Access: Status as of June 30, 2008*, Industry Analysis and Technology Division, Wireline Competition Bureau, p. 2 (July 2009).

<sup>10</sup> In addition, the Commission should seek Congressional authorization to assess intrastate revenues, in addition to interstate, which it is not presently permitted to do. This would provide the Commission with more options on how it structures the contribution methodology. However, until such time as the Commission is permitted to assess total revenues, it would be advisable to base USF contributions, at least in large part, on some combination of public network connections and working telephone numbers.

and one mobile wireless provider in each rural service area. Also, the identical support rule for competitive ETCs should be abandoned and, at least in rural service areas, support for these carriers should be based on their own costs.<sup>11</sup> Taken together, these two measures would likely produce significant savings in the High Cost program but, unlike NCTA's proposal, without jeopardizing the ability of consumers in rural service areas to gain access to "reasonably comparable" advanced services and rates.<sup>12</sup> Furthermore, when combined with reform of the contribution methodology, it would allow for prudent, necessary growth in support for broadband investment in rural service areas.

Therefore, the Commission should not give any further consideration to NCTA's petition for rural service areas. Instead, the FCC's National Broadband Plan should recommend that OPASTCO's plan for a Universal High Speed Broadband Fund be used as a starting point for further rulemaking proceedings on USF and ICC reform for rural ILEC territories. Unlike NCTA's proposal, OPASTCO's forward-looking plan would reshape the existing rural High Cost program to explicitly support the deployment and operation of high-speed broadband networks in rural service areas, and enable the universal availability of affordable, robust broadband services in these territories. The components of OPASTCO's plan are as follows:

- Create a new Universal High Speed Broadband Fund, which would support all of the major network components needed to provide high-speed broadband service – last-mile loop costs, second-mile transport costs, middle-mile transport costs, and access to the Internet backbone. Both capital expenditures and ongoing operational expenses would be eligible for support.
- The plan would support one fixed technology high-speed network provider in each rural service area. It also allows for one mobile wireless provider in each

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<sup>11</sup> See, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1467, 1470, 1472, ¶¶1, 5, 10 (2008).

<sup>12</sup> See, 47 U.S.C. 254(b)(3).

area to be supported. Support amounts are based on a demonstration of actual costs that exceed a qualifying threshold.

- Rural ILECs can “opt in” to the new Fund at any time during a seven-year transition period. Once a rural ILEC opts in, all high-cost support is received via the new Fund. At the time of opt in, a rural ILEC would immediately begin receiving the support amount that they were presently receiving from the existing mechanisms, as a starting point. Those ILECs choosing not to opt in immediately would continue to receive support through the existing mechanisms.
- All ICC rates transition down to zero over seven years, and the ICC revenues that rural ILECs are receiving at the time they opt in would gradually transition into the support received from the new Fund, as the ICC rates are reduced. Rural ILECs may also elect to immediately reduce their ICC rates to zero at the time they opt in.
- At the end of the seven-year transition period, the existing rural high-cost support mechanisms and ICC regime are eliminated, and carriers would be recovering their broadband network costs through a combination of affordable end-user rates and support from the new Fund. At that time, the PSTN is fully converted to a broadband network.
- All fixed technology providers receiving support through the new Fund must commit to offering broadband throughout the service area at speeds that are at least equal to the national average broadband speed, and end-user rates that are reasonably comparable to the national average rate. Support recipients must also submit to quality of service oversight.
- The Low Income program is expanded to support broadband Internet access service for qualifying consumers.
- Contributions to all USF programs, including the new Universal High Speed Broadband Fund, would be based on a combination of public network connections and working telephone numbers, including all broadband connections in service, regardless of technology.

### **III. CONCLUSION**

The Commission should reject NCTA’s petition for rural service areas. It is a backwards-looking, voice-centric proposal and its adoption would halt progress toward the ubiquitous availability of high-speed broadband services in rural service areas, contrary to the goals of Congress and the FCC. Instead, the FCC’s National Broadband

Plan should recommend that OPASTCO's plan for a Universal High Speed Broadband Fund be used as a starting point for further rulemaking proceedings on USF and ICC reform for rural service areas. Adoption of OPASTCO's plan will ensure that advanced, next generation broadband is available and affordable to all residents and businesses in rural service areas, and is reasonably comparable to the broadband services and rates offered in other areas of the country.

Respectfully submitted,

**THE ORGANIZATION FOR THE  
PROMOTION AND ADVANCEMENT OF  
SMALL TELECOMMUNICATIONS COMPANIES**

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January 7, 2010

## **CERTIFICATE OF SERVICE**

I, Brian J. Ford, hereby certify that a copy of the comments of the Organization of the Promotion and Advancement of Small Telecommunications Companies was sent on this, the 7th day of January, 2010 by electronic mail, to those listed on the attached list.

By: /s/ Brian J. Ford  
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**SERVICE LIST**  
**GN Docket No. 09-51**  
**WC Docket No. 05-337**  
**RM-11584**

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